

117TH CONGRESS  
1ST SESSION

# S. 1833

To amend title XIX of the Social Security Act to extend the application of the Medicare payment rate floor to primary care services furnished under Medicaid and to apply the rate floor to additional providers of primary care services.

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## IN THE SENATE OF THE UNITED STATES

MAY 26, 2021

Mr. BROWN (for himself, Mrs. MURRAY, Mr. BLUMENTHAL, Mr. MURPHY, Ms. BALDWIN, Mr. SCHATZ, Mr. LEAHY, Mr. MERKLEY, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XIX of the Social Security Act to extend the application of the Medicare payment rate floor to primary care services furnished under Medicaid and to apply the rate floor to additional providers of primary care services.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Ensuring Access to  
5 Primary Care for Women & Children Act”.

1   **SEC. 2. RENEWAL OF APPLICATION OF MEDICARE PAY-**  
2                   **MENT RATE FLOOR TO PRIMARY CARE SERV-**  
3                   **ICES FURNISHED UNDER MEDICAID AND IN-**  
4                   **CLUSION OF ADDITIONAL PROVIDERS.**

5       (a) RENEWAL OF PAYMENT FLOOR; ADDITIONAL  
6 PROVIDERS.—

7               (1) IN GENERAL.—Section 1902(a)(13) of the  
8 Social Security Act (42 U.S.C. 1396a(a)(13)) is  
9 amended by striking subparagraph (C) and inserting  
10 the following:

11               “(C) payment for primary care services (as  
12 defined in subsection (jj)) at a rate that is not  
13 less than 100 percent of the payment rate that  
14 applies to such services and provider under part  
15 B of title XVIII (or, if greater, the payment  
16 rate that would be applicable under such part  
17 if the conversion factor under section 1848(d)  
18 for the year involved were the conversion factor  
19 under such section for 2009), and that is not  
20 less than the rate that would otherwise apply to  
21 such services under this title if the rate were  
22 determined without regard to this subpara-  
23 graph, and that are—

24               “(i) furnished in 2013 and 2014, by a  
25 physician with a primary specialty designa-

tion of family medicine, general internal medicine, or pediatric medicine; or

“(ii) furnished in the 2-year period that begins on the first day of the first month that begins after the date of enactment of the Ensuring Access to Primary Care for Women & Children Act or during any other additional period specified with respect to the State under section 1905(dd)(2)—

“(I) by a physician with a primary specialty designation of family medicine, general internal medicine, or pediatric medicine, but only if the physician self-attests that the physician is Board certified in family medicine, general internal medicine, or pediatric medicine;

“(II) by a physician with a primary specialty designation of obstetrics and gynecology, but only if the physician self-attests that the physician is Board certified in obstetrics and gynecology;

1                         “(III) by an advanced practice  
2                         clinician, as defined by the Secretary  
3                         (except that the Secretary shall define  
4                         such term for purposes of this sub-  
5                         paragraph to exclude a provider de-  
6                         scribed in subclause (I), (II), or (V)),  
7                         that works under the supervision of—  
8                             “(aa) a physician that satis-  
9                         fies the criteria specified in sub-  
10                         clause (I) or (II); or  
11                             “(bb) a nurse practitioner or  
12                         a physician assistant (as such  
13                         terms are defined in section  
14                         1861(aa)(5)(A)) who is working  
15                         in accordance with State law, or  
16                         a certified nurse-midwife (as de-  
17                         fined in section 1861(gg)) who is  
18                         working in accordance with State  
19                         law;  
20                             “(IV) by a rural health clinic,  
21                         Federally-qualified health center, or  
22                         other health clinic that receives reim-  
23                         bursement on a fee schedule applica-  
24                         ble to a physician, a nurse practi-  
25                         tioner or a physician assistant (as

such terms are defined in section 1861(aa)(5)(A)) who is working in accordance with State law, or a certified nurse-midwife (as defined in section 1861(gg)) who is working in accordance with State law, for services furnished by a physician, nurse practitioner, physician assistant, or certified nurse-midwife, or services furnished by an advanced practice clinician supervised by a physician described in subclause (I) or (II), another advanced practice clinician, a nurse practitioner, physician assistant, or a certified nurse-midwife; or

“(V) by a nurse practitioner or a physician assistant (as such terms are defined in section 1861(aa)(5)(A)) who is working in accordance with State law, or a certified nurse-midwife (as defined in section 1861(gg)) who is working in accordance with State law, in accordance with procedures that ensure that the portion of the payment for such services that the

11 (A) by striking “Notwithstanding” and in-  
12 serting the following:

13               “(1) IN GENERAL.—Notwithstanding”:

(C) by adding at the end the following:

19           “(2) ADDITIONAL PERIODS.—For purposes of  
20        paragraph (1):

“(A) The 2-year period that begins on the first day of the first month that begins after the date of enactment of the Ensuring Access to Primary Care for Women & Children Act

1           shall be an additional period with respect to all  
2           States.

3           “(B) Any public health emergency period  
4           (as defined in paragraph (3)) with respect to a  
5           State shall be an additional period with respect  
6           to such State.

7           “(3) PUBLIC HEALTH EMERGENCY PERIOD.—  
8           For purposes of paragraph (2), the term ‘public  
9           health emergency period’ means, with respect to a  
10          State, a period that—

11           “(A) begins on the date on which a public  
12           health emergency is declared with respect to the  
13           State by the Secretary pursuant to section 319  
14           of the Public Health Service Act; and

15           “(B) ends on the last day of the sixth  
16           month that begins on or after the date on which  
17           such declaration expires.”.

18           (b) IMPROVED TARGETING OF PRIMARY CARE.—Sec-  
19          tion 1902(jj) of the Social Security Act (42 U.S.C.  
20          1396a(jj)) is amended—

21           (1) by redesignating paragraphs (1) and (2) as  
22           subparagraphs (A) and (B), respectively, and re-  
23           aligning the left margins accordingly;

24           (2) by striking “For purposes of” and inserting  
25           the following:

1           “(1) IN GENERAL.—For purposes of”; and

2           (3) by adding at the end the following:

3           “(2) EXCLUSIONS.—Such term does not include  
4           any services described in subparagraph (A) or (B) of  
5           paragraph (1) if such services are provided in an  
6           emergency department of a hospital.”.

7           (c) ENSURING PAYMENT BY MANAGED CARE ENTI-  
8           TIES.—

9           (1) IN GENERAL.—Section 1903(m)(2)(A) of  
10          the Social Security Act (42 U.S.C. 1396b(m)(2)(A))  
11          is amended—

12           (A) in clause (xii), by striking “and” after  
13           the semicolon;

14           (B) in clause (xiii)—

15           (i) by realigning the left margin so as  
16           to align with the left margin of clause (xii);  
17           and

18           (ii) by striking the period at the end  
19           and inserting “; and”; and

20           (C) by inserting after clause (xiii) the fol-  
21           lowing:

22           “(xiv) such contract provides that (I) payments  
23          to providers specified in section 1902(a)(13)(C) for  
24          primary care services defined in section 1902(jj)  
25          that are furnished during a year or period specified

in section 1902(a)(13)(C) and section 1905(dd) are at least equal to the amounts set forth and required by the Secretary by regulation, (II) the entity shall, upon request, provide documentation to the State, sufficient to enable the State and the Secretary to ensure compliance with subclause (I), and (III) the Secretary shall approve payments described in subclause (I) that are furnished through an agreed upon capitation, partial capitation, or other value-based payment arrangement if the capitation, partial capitation, or other value-based payment arrangement is based on a reasonable methodology and the entity provides documentation to the State sufficient to enable the State and the Secretary to ensure compliance with subclause (I).”.

**20 SEC. 3. IMPROVING QUALITY AND VALUE FOR MEDICAID  
21 BENEFICIARIES.**

22 (a) GAO STUDY.—Not later than 3 years after the  
23 date of enactment of this Act, the Comptroller General  
24 of the United States shall submit to Congress a report  
25 that examines the effects of the payment rate floor for

1 primary care services under Medicaid provided under sec-  
2 tion 1902(a)(13)(C) of the Social Security Act (42 U.S.C.  
3 1396a(a)(13)(C)) on beneficiary access to such services,  
4 including any recommendations for how the payment rate  
5 floor for such services could be more effective.

6       (b) FUNDING THE DEVELOPMENT OF QUALITY  
7 MEASURES.—The first sentence of section 1139B(e) of  
8 the Social Security Act (42 U.S.C. 1320b–9b(e)) is  
9 amended by inserting “, and for fiscal year 2022,  
10 \$15,000,000,” before “for the purpose”.

11       (c) DEVELOPING QUALITY MEASURES FOR BENE-  
12 FICIARIES WITH DISABILITIES.—Section 1139B(b)(5) of  
13 the Social Security Act (42 U.S.C. 1320b–9b(b)(5)) is  
14 amended by adding at the end the following:

15               “(D) QUALITY MEASURES SPECIFIC TO  
16 ADULT INDIVIDUALS WITH DISABILITIES.—The  
17 Secretary, acting through the Administrator for  
18 the Centers for Medicare & Medicaid Services  
19 and the Director of the Agency for Healthcare  
20 Research and Quality, shall develop adult  
21 health quality measures that are specific to  
22 adult individuals with disabilities and shall in-  
23 clude those measures in the Medicaid Quality  
24 Measurement Program. In developing such  
25 measures, priority shall be given to developing

1           quality measures that assess the impact on  
2           adult individuals with disabilities of existing  
3           programs and to the development of quality  
4           measures that assess the impact of new service  
5           delivery innovations on such individuals.”.

